

REMARKS

Claims 1-3, 6-14, 19-21, 23-24, and 27-46 are pending, with claims 1, 12, 20, 24, 31, and 33 being independent.

Reconsideration and allowance of the above-referenced application are respectfully requested.

Rejections Under 35 U.S.C. §102

Claims 1-3, 6-14, 19-21, 23-24, and 27-46 stand rejected under 35 U.S.C. §102(e) as allegedly being unpatentable over U.S. Application No. 2002/0103916 by Chen et al. (hereinafter "Chen"). This contention is respectfully traversed.

Chen does not disclose each and every element of claim 1. For example, Chen fails to disclose "generating an average that relates to traffic of a specified type; comparing current network traffic to said average, at first and second points of a network, ... and based on said comparing analyzing the information generated" (emphases added) as recited in claim 1. (See, e.g., P. 6, line 27 to P. 7 line 4 of the application as filed, which discloses that "To detect an uncharacteristically large number of SYN requests, the interface device can monitor the traffic through it to determine the normal level of traffic. This can

include continuously monitoring the traffic to determine a moving average.")

Contrary to the Office's contention, the cited portions of Chen (P. 1 [0007-0008], P. 2 [0027], Fig. 6 item #32a, and Fig. 4 items #42 and #44) do not disclose "generating an average that relates to traffic of a specified type" (emphases added) as recited in claim 1. In fact, Chen merely discloses "a process 32a to collect statistics of packets" ([0049]) by "tracking ratios of SYN's to SYN ACKs and SYN ACKs to ACKs and comparing the ratios to threshold values" (emphases added; [0007]), and that "[t]he data collector samples 42 one (1) packet in every (n) packets and has counters to collect statistics about every packet" (emphasis added; [0037]). A ratio, as disclosed by Chen, is not an "average" as claimed. Although Chen does teach an architecture that is intended to thwart denial of service, nowhere is there any disclosure in Chen of the "generating an average" and comparing which is recited in claim 1.

Claim 1 defines finding an average related to traffic of a specified type, comparing current network traffic to that average, and defines the comparison is used to generate information about unwanted communications. This is in no way disclosed by Chen. In fact, Chen discloses that "[t]he monitoring process includes a process to track ratios of SYN's to

SYN ACKs and SYN ACKs to ACKs and compare the ratios to threshold values" (emphases added; [0009]), and "the monitoring process in the gateway 26 can examine 82 a ratio of incoming to outgoing TCP packets" (emphasis added; [0061]).

Chen's disclosure of "tracking ratios" stands in sharp contrast with "generating an average" as in claim 1. There is simply no disclosure of monitoring the network traffic to determine an average, and comparing current network traffic to that average in order to set a desired cut off. A ratio is not the same as an average. Further, there is no disclosure in Chen of using the techniques that are claimed herein to identify which of the points first carried the unwanted communications such as defined by claim 1. Therefore, Chen does not disclose all the features of claim 1, and claim 1 should be in condition for allowance.

Independent claims 12, 20, 24, 31, and 33 recite similar features to those described above with reference to claim 1, and are hence allowable for at least the reasons provided above. For example, claim 12 recites, among other features: "generating an average ... and comparing said current communications with said average", and claim 20 recites, among other features: "generating an average ... and analyzing the information ... to said average".

Claim 24 recites, among other features: "generating an average ... comparing current network traffic with said average", and claim 31 recites, among other features: "generate an average ... comparing current network traffic with said average". Claim 33 recites, among other features: "generate an average ... comparing current network with said average". Therefore, independent claims 12, 20, 24, 31, and 33 are patentably distinguishable over Chen for analogous reasons to those discussed for independent claim 1. Claims 2-3, 6-11, 13-14, 19, 21, 23, 27-30, 32, and 34-46 depend generally from claim 1, 12, 20, 24, 31, or 33. Thus, these dependent claims are allowable for at least the reasons provided above.

Additionally, many of the dependent claims are independently allowable. For example, claim 36 recites that "said average is a moving average of the specified type of network traffic" (emphasis added), which is further novel over Chen. The portions of Chen (P. 5, [0058-0061]) cited by the Office do not disclose the limitations of claim 36. As discussed above, Chen discloses "the monitoring process in the gateway 26 can examine 82 a ratio of incoming to outgoing TCP packets" (emphasis added; [0061]). Chen does not disclose "generating an average" and "comparing current network traffic to said average" as recited in claim 1, let alone the additional

limitation of claim 36, which specifies that the "average is a moving average." Therefore, claim 3 should be allowable for at least this additional reason.

### **Concluding Comments**

It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

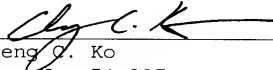
Applicants ask that all claims be allowed. Please apply applicable charges or credits to Deposit Account No. 06-1050.

Applicant: James L. Jason Jr. et al.  
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Respectfully submitted,

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Cheng Q. Ko  
Reg. No. 54,227

Fish & Richardson P.C.  
12390 El Camino Real  
San Diego, California 92130  
Telephone: (858) 678-5070  
Facsimile: (858) 678-5099

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